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ELEKTRA ENTERTAINMENT GROUP
INC.; UMG RECORDINGS, INC.; and
SONY BMG MUSIC ENTERTAINMENT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ELEKTRA ENTERTAINMENT GROUP INC.,
a Delaware corporation; UMG RECORDINGS,
INC., a Delaware corporation; and SONY BMG
MUSIC ENTERTAINMENT, a Delaware
general partnership,

Plaintiffs,

v.

JOHN DOE,

Defendant.

CASE NO. 3:07-CV-06027-EDL

Honorable Elizabeth D. Laporte

***EX PARTE APPLICATION TO CONTINUE
CASE MANAGEMENT CONFERENCE
AND EXTEND TIME TO SERVE
DEFENDANT AND [PROPOSED] ORDER***

1 Plaintiffs respectfully request that the Court continue the case management conference
2 currently set for March 4, 2008, at 10:00 a.m. to June 10, 2008. Plaintiffs further request, pursuant
3 to the Federal Rules of Civil Procedure, Rules 4(m) and 6(b)(1)(A), that the Court grant an
4 additional 90 days to serve Defendant with the Summons and Complaint. As further explained
5 below, Plaintiffs have not yet discovered the identity of the Doe defendant in this case, and cannot
6 move this case forward until they do so. In support of their request, Plaintiffs state as follows:

7 1. The initial case management conference is currently scheduled for March 4, 2008, at
8 10:00 a.m. The current deadline for service of process is March 28, 2008. No previous
9 continuances or extensions have been requested or granted in this case.

10 2. Plaintiffs filed their Complaint for Copyright Infringement against Defendant John
11 Doe ("Defendant") on November 29, 2007. Plaintiffs did not have sufficient identifying information
12 to name Defendant in the Complaint, but were able to identify Defendant by the Internet Protocol
13 address assigned by Defendant's Internet Service Provider ("ISP"). Accordingly, in order to
14 determine Defendant's true name and identity, Plaintiffs filed their *Ex Parte* Application for Leave
15 to Take Immediate Discovery on November 29, 2007, requesting that the Court enter an Order
16 allowing Plaintiffs to serve a Rule 45 subpoena on the ISP.

17 3. The Court entered an Order for Leave to take Immediate Discovery on January 29,
18 2008, which was promptly served upon the ISP along with a Rule 45 subpoena. Plaintiffs expect the
19 ISP to respond to the subpoena on March 14, 2008.

20 4. Once Plaintiffs receive the Doe Defendant's identifying information, Plaintiffs intend
21 to send a letter to Defendant notifying him or her of Plaintiffs' claims and inviting Defendant to
22 contact Plaintiffs and attempt resolution of the dispute. If the dispute cannot be resolved, Plaintiffs
23 intend to file a First Amended Complaint naming Defendant personally, and then proceed to serve
24 process upon him or her.

25 5. Given the foregoing circumstances, and because Plaintiffs will not learn Defendant's
26 identity until after the date of the currently scheduled case management conference, Plaintiffs
27 respectfully request that the case management conference be continued to June 10, 2008, or such
28 other date as conveniences the Court.

1 6. Plaintiffs also request an additional 90 days to effectuate service. Given that the
2 current deadline for service of process expires just fourteen days after Plaintiffs expect to learn
3 Defendant's identity, Plaintiffs would be left with little time to contact Defendant and attempt to
4 resolve the dispute, or to amend the Complaint and begin service attempts on Defendant if attempts
5 to resolve the dispute fail.

6 7. Plaintiffs submit that their plans to notify Defendant of their claims (once he or she is
7 identified) and attempt to resolve the case before naming him or her in the lawsuit constitute good
8 cause under Rule 4(m) for any delay in perfecting service. *See, e.g., Matasareanu v. Williams*, 183
9 F.R.D. 242, 245-46 (C.D. Cal. 1998) (stating good cause standard for service extensions); *Ritts v.*
10 *Dealers Alliance Credit Corp.*, 989 F. Supp. 1475, 1479 (N.D. Ga. 1997) (same). Moreover, unlike
11 a traditional case in which the defendant is known by name and efforts to serve can begin
12 immediately after filing the complaint, in this case Plaintiffs first must obtain the identity of the
13 defendant through the subpoena to the ISP, a process which is not yet complete. This Court has
14 discretion to enlarge the time to serve even where there is no good cause shown. *Henderson v.*
15 *United States*, 517 U.S. 654, 658 n. 5 (1996).

16 8. Because the copyright infringements here occurred in 2007, the three-year limitations
17 period for these claims has not expired. *See* 17 U.S.C. § 507(b) (2000). There can thus be no
18 prejudice to Defendant from any delay in serving the Complaint.

19 9. Plaintiffs will provide the Defendant with a copy of this request and any Order
20 concerning this request when service of process occurs.

21 Dated: February 22, 2008

HOLME ROBERTS & OWEN LLP

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23 By: /s/ Matthew Franklin Jaksa
24 MATTHEW FRANKLIN JAKSA
25 Attorney for Plaintiffs
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[PROPOSED] ORDER

Good cause having been shown:

IT IS ORDERED that the case management conference currently set for March 4, 2008, at 10:00 a.m. be continued to June 10, 2008.

IT IS FURTHER ORDERED that, pursuant to the Federal Rules of Civil Procedure, Rules 4(m) and 6(b)(1), Plaintiffs' time to serve the Summons and Complaint on Defendant be extended to June 26, 2008.

Dated: _____

By: _____
Honorable Elizabeth D. Laporte
United States Magistrate Judge